temporary insurance, based on the net value of the original policy, had expired before his death. *Rose* v. *Franklin Life Ins. Co.*, 132 S. W. 613 (Mo.). See NOTES, p. 662.

INSURANCE — MUTUAL BENEFIT INSURANCE — LIMITATION OF ACTION. — The defendant, a mutual benefit life insurance society, promised to pay a certain sum after proof of the death of the insured while a member. The contract did not specify who was to give the proof, but required notice of death from the local to the central lodge. Action to recover the amount promised was brought fourteen and one-half years after the disappearance of the insured, eight years after the termination of his membership, and five months after proof of death was given the central by the local lodge. The latter had contemporaneous knowledge of both the disappearance and the continued absence of the insured. *Held*, that the action is not barred by the Statute of Limitations (six years). *Kelly* v. *Ancient Order of Hibernians Ins. Fund*, 129 N. W. 846 (Minn.).

In such contracts the beneficiary is not the one to perform the condition of proof of death. *Anderson* v. *Supreme Council*, 135 N. Y. 107. *Cf. Doggett* v. *United Order of the Golden Cross*, 126 N. C. 477. Therefore the local lodge must be the one to perform it, and this means that the society itself, through its agent, is to perform the condition. *Patterson* v. *United Artisans*, 43 Or. 333. Even if the condition be not performed, the beneficiary can recover the whole amount promised. *Murphy* v. *Independent Order*, 77 Miss. 830. This recovery can be had on either of two theories. The plaintiff may sue for breach of the express promise to pay, non-performance of the condition being excused by the promisor's prevention of its performance. *Jones* v. *Walker*, 13 B. Mon. (Ky.) 163; *Cape Fear Navigation Co.* v. *Wilcox*, 7 Jones (N. C.) 481. In the principal case the beneficiary had such an excuse, and therefore the right of action, more than six years before suit. Or the plaintiff may recover, in the second place, for the breach of the defendant's promise, implied in fact, to perform the condition. *Cf.* 24 HARV. L. REV. 404; *Ford* v. *Tiley*, 6 B. & C. 325. Delay in the performance of this subsidiary promise will amount in time to a repudiation of the entire contract, giving rise to an action for damages as for a complete breach. See WILLISTON, SALES, §§ 500, 500 (a), 500 (b). After such a repudiation no other right of action can accrue on the contract. *Cf. Clark* v. *Marsiglia*, 1 Den. (N. Y.) 317; *Gibbons* v. *Bente*, 51 Minn. 499. But *cf. Roebling's Sons' Co.* v. *Lock Stitch Fence Co.*, 130 Ill. 660. In the principal case such a repudiation must have occurred more than six years before suit. On either theory, therefore, the action should have been held to be outlawed.

INSURANCE — RIGHTS OF INSURER — SUBROGATION TO RIGHTS OF INSURED WHEN LOSS IS PAID WITHOUT LEGAL LIABILITY. — Owing to the defendant's fault, its vessel was obliged to deviate from its course to get coal. During the deviations it ran aground, and subsequently a lien was asserted against the cargo for salvage. The plaintiff, the insurer of the cargo, paid the salvage, though there was no provision in the policy for liability in case of deviation. The plaintiff claimed to be subrogated to the rights of the owner of the cargo, and sued the defendant for the amount paid for salvage. *Held*, that it can recover. *British & Foreign Marine Ins. Co.* v. *Kilgour Steamship Co., Limited*, 184 Fed. 174 (Dist. Ct., S. D. N. Y.).

The contention of the defendant was that the plaintiff, not being liable on account of the deviation, paid as a mere volunteer and therefore could not recover. One who officiously discharges the obligation of another cannot recover from the original obligor. *Stokes* v. *Lewis*, 1 T. R. 20. The difficulty arises, as in the principal case, in determining whether or not the payment was voluntary or officious. When a surety, without liability to do so, dis-

charges the debt, he is not subrogated to the rights of the creditor against the principal debtor. *Kimble* v. *Cummins*, 3 Met. (Ky.) 327; *Bancroft* v. *Abbott*, 3 Allen (Mass.) 524. But in limitation of this doctrine it is held that he does not lose his right to subrogation by waiving certain defenses which he may have against the creditor. *Beal* v. *Brown*, 13 Allen (Mass.) 114 (Statute of Frauds); *Shaw* v. *Loud*, 12 Mass. 447 (Statute of Limitations); *Ricketson* v. *Giles*, 91 Ill. 154 (coverture); *Simmons* v. *Goodrich*, 68 Ga. 750 (variation of risk). There seems to be no fixed rule as to the extent to which defenses may be waived, but the principal case is supported by authority in applying the principle liberally to underwriters. *Amazon Ins. Co.* v. *The Iron Mountain*, Fed. Cas. No. 270. See *Sun Mutual Ins. Co.* v. *Mississippi Valley Transportation Co.*, 17 Fed. 919, 923. It is submitted, however, that there could be no recovery if payment were made on an absolutely void policy, and that the language of the decision is very broad.

LANDLORD AND TENANT — RENT — LANDLORD'S STATUTORY LIEN. — A contract of sale of land provided that on the purchaser's failure to pay any annual instalment of the price he should pay rent for that current year, the relation of landlord and tenant should immediately arise, and the landlord's lien for rent come into being, with full right to distrain as if a contract of rental had been made at the beginning of the year. The purchaser, before his failure to pay the first instalment, mortgaged his crops to one who knew of the contract. A statute gave a landlord a lien for rent on his tenant's crops. *Held*, that the vendor has a landlord's lien superior to the mortgagee's lien. *Wilkins* v. *Fulcher*, 70 S. E. 691 (Ga., Ct. App.).

The statute might have been construed to protect a seller who has let the buyer into possession; for the latter is before the conveyance a tenant at will. *Harris* v. *Frink*, 49 N. Y. 24. *Contra*, *Griffith* v. *Collins*, 116 Ga. 420. He is liable for use and occupation, if he prevents a conveyance. *Gould* v. *Thompson*, 4 Met. (Mass.) 224. *Contra*, *Smith* v. *Stewart*, 6 Johns. (N. Y.) 46. And the statutory lien arises on an express agreement to pay for use and occupation. *Powell* v. *Hadden's Executors*, 21 Ala. 745. But the statute has been construed as not extending to the merely incidental tenancy arising from the relation of buyer and seller. *Taylor* v. *Taylor*, 112 N. C. 27. *Cf. Tucker* v. *Adams*, 52 Ala. 254. Therefore the principal case is incorrect if prior to the purchaser's default the relation was solely one of buyer and seller. *Wilczinski* v. *Lick*, 68 Miss. 596. It is correct if the contract also established an immediate relation of landlord and tenant within the meaning of the statute. *Bacon* v. *Howell*, 60 Miss. 362; *Jones* v. *Jones*, 117 N. C. 254. A contract merely requiring payment of rent upon the purchaser's failure to pay any instalment of the price has been held to create such a relation. *Collins* v. *Whigham*, 58 Ala. 438. *Cf. Thornton* v. *Strauss*, 79 Ala. 164. *Contra*, *Oxford* v. *Ford*, 67 Ga. 362. At any rate, the contract in the principal case, with its additional provisions, may be so construed. *Cf. British & American Mortgage Co.* v. *Cody*, 135 Ala. 622.

LAW AND FACT — PROVINCES OF COURT AND JURY — COMPETENCY OF WITNESS DEPENDING ON MAIN ISSUE. — On the sole issue whether the defendant was one Lee, who was admitted to have committed the murder charged, the defense offered to put Lee's wife on the stand to disprove the identity. The law of the state prohibited husband and wife from testifying for or against each other. The court refused the testimony on the ground that it believed the defendant was Lee. *Held*, that this was not error. *State* v. *Lee*, 64 So. 356 (La.).

It is well settled that questions relating to the admissibility of evidence are for the judge. *Bartlett* v. *Smith*, 11 M. & W. 483. This is so even if the question